

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1996-318-C - ORDER NO. 2001-151
FEBRUARY 21, 2001

IN RE: Establishment of Fund to Address Revenue)	ORDER DENYING
Impact on Incumbent Local Exchange)	DISCOVERY
Carriers Electing to Reduce Toll Switched)	CONFERENCE AND
Access Rates.)	CONTINUANCE

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion for a Discovery Conference and for continuance of the ALLTEL South Carolina, Inc. (ALLTEL or the Company) Interim Local Exchange Carrier Fund hearing filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). ALLTEL filed a Return to the Motion, and the Consumer Advocate also filed a Reply to the Response.

Essentially, the Consumer Advocate asserts that ALLTEL objected to 10 of the 11 questions propounded in the Consumer Advocate's January 11, 2001 set of interrogatories on the grounds of relevance, although ALLTEL provided some information. The Consumer Advocate states that even Supplemental Responses by the Company failed to provide all requested information.

The Consumer Advocate asserts that, pursuant to Commission Regulation 103-854, the South Carolina Rules of Civil Procedure (SCRCP) govern all discovery matters not covered in Commission Regulations 103-850 through 103-852. The Consumer Advocate further requests a discovery conference, pursuant to Rule 26(f) SCRCP. This

rule provides that at any time after the commencement of an action, the court may direct the attorneys for parties to appear before it for a conference on the subject of discovery. The Consumer Advocate alleges that certain language in the rule mandates that this Commission hold the requested discovery conference.

According to the Consumer Advocate, the matters at issue in the instant proceeding concern the appropriate methods by which ALLTEL will recover the revenues that it lost when it lowered its intrastate switched access charges to the level of the largest LEC as part of its participation in the Interim LEC Fund. The Consumer Advocate states that S.C. Code Ann. Section 58-9-280(L) requires that this revenue loss be offset by adjustment of other rates and distributions from the Interim LEC Fund, and that the Commission issued Order No. 96-882, approving a plan which was “designed to lay the entire burden on increases in basic local exchange rates.” The Consumer Advocate characterizes the issue before the Commission as whether increases in rates, other than basic local exchange rates, and distributions from the Interim LEC Fund can alleviate the need for basic local exchange rate increases. The Consumer Advocate states that in order to make recommendations to the Commission on what other rates may be increased, the Consumer Advocate needs the financial information requested in his first set of interrogatories. In order to accomplish this task, the Consumer Advocate proposes that the Commission schedule a discovery conference at the earliest possible date. The Consumer Advocate also requests a continuance of the hearing. (The Consumer Advocate also notes that he has served the identical set of interrogatories upon each local exchange company individually that is subject to a hearing on remand in Docket No. 96-318-C and

apparently intends for the Motion for the Discovery Conference to extend to all of these companies.)

ALLTEL filed a Return to the Consumer Advocate's Motion. ALLTEL points out that the case was remanded to the Commission by Order of the Supreme Court on January 24, 2000, and that the Consumer Advocate did not serve his interrogatories until January 11, 2001. Further, ALLTEL states that it responded truthfully and in good faith to the interrogatories, and, upon request, furnished additional information., despite its objections to various questions on the grounds of relevance. ALLTEL then describes generally how it responded to the various interrogatories propounded by the Consumer Advocate. The data provided or offered to be provided, according to ALLTEL, included 4 years of detailed annual reports, 38 pages of tariff sheets, a detailed embedded cost study for ALLTEL, information on interstate high cost funds received over a 4-year period, information on interim LEC fund amounts received over a 4-year period, and 165 pages of agreements between ALLTEL and other carriers. Finally, among other things, ALLTEL states that although the Consumer Advocate asserts that the Supreme Court held that this proceeding was a "rate case," the only issue that was actually before the Supreme Court was that of notice, and the submission of data pursuant to Commission Regulation 103-854 is not required.

The Consumer Advocate filed a Reply to Return to Motion also. The Consumer Advocate professed his willingness to work with all parties and the Commission Staff with regard to the hearings on the matter, and to press the process forward. The Consumer Advocate also pointed out alleged deficiencies in the answers to its

interrogatories provided by ALLTEL, and renewed its Motion for a Discovery Conference. The Consumer Advocate states a belief that such a conference is mandatory upon request, and cites the case of Union City Barge Line, Inc. v. Union Carbide Corp., 823 F. 2d 129 (1987) for this proposition.

Because of the reasoning stated below, we deny the Motion for the Discovery Conference and the Motion for the continuance of the hearing.

The problem with the Union City case is that it may be differentiated factually from the case at bar. This case concerned a complex antitrust matter, in which one party gave notice of twenty depositions, but was only able to complete two of them. The other side also requested numerous protective orders, among other things. The present case concerns simply the answering of interrogatories. Further, the Union City case comes from the Fifth Circuit Court of Appeals. South Carolina Courts, being in the Fourth Circuit, are not bound by Fifth Circuit decisions. Accordingly, this case is very questionable as precedent in the case at bar, especially in light of the Hearing Reporter's Notes that follow Rule 26, which state that discovery conferences are discretionary with the tribunal. Thus, we reject the proposition that a discovery conference in the present case is mandatory. We hold that this conference is discretionary with the Commission.

We also note that the Reporter's Notes state that the purpose of a discovery conference is to prevent discovery abuse by encouraging the court to intervene when abuse occurs, or when an attorney has failed to obtain the cooperation of opposing counsel and should have the assistance of the Court. Under the circumstances of this case, we discern no discovery abuse, nor do we believe that the Consumer Advocate has failed

to obtain the cooperation of opposing counsel. Further, we disagree with the Consumer Advocate's characterization of our decision in the original case. We believe that ALLTEL has furnished all information that is relevant to the subject matter involved in the pending action upon request of the Consumer Advocate, and that what has been furnished is adequate for the purposes for which it is sought by the Consumer Advocate, with one exception as listed below. We accordingly deny the Motion for the Discovery Conference related to ALLTEL and the other local exchange carriers, as well as the Motion to continue the ALLTEL hearing.

The Consumer Advocate notes that the Supreme Court has referred to the original interim LEC Fund proceeding as a "utility rate case." We would note that Commission Regulation 103-834 sets out the requirements for the contents of Applications for utility rate cases. We believe that the local exchange carriers in the case at bar have furnished all information set out in that regulation except the rates of return on rate base and on common equity. See 103-834(A)(3)(g). Accordingly, we hereby require all of the pertinent local exchange companies to file with the Commission, prior to any hearing on this matter, their rates of return on rate base and/or on common equity for the twelve months period ending at the end of December 1996, 1997, 1998, and 1999. We believe that this will complete the rate case information obtainable by the Consumer Advocate as set out by the Regulation.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director
(SEAL)